

FILED 10 FEB 8 7:39 USDC-ORP

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF OREGON
PORTLAND DIVISION**

**TALIA HINMAN and MELINDA
HINMAN,**

08-CV-1070-PK

Plaintiffs,

ORDER

v.

**JOHN ALDEN LIFE INSURANCE
COMPANY,**

Defendant.

BROWN, Judge.

Magistrate Judge Paul Papak issued Findings and Recommendation (#31) on November 24, 2009, in which he recommended the Court deny Plaintiffs' Motion for Summary Judgment (#8) and grant Defendant's Cross-Motion for Summary Judgment (#16). Plaintiffs filed timely Objections to the

Findings and Recommendation. The matter is now before this Court pursuant to 28 U.S.C. § 636(b)(1) and Federal Rule of Civil Procedure 72(b).

When any party objects to any portion of the Magistrate Judge's Findings and Recommendation, the district court must make a *de novo* determination of that portion of the Magistrate Judge's report. 28 U.S.C. § 636(b)(1). See also *United States v. Reyna-Tapia*, 328 F.3d 1114, 1121 (9th Cir. 2003) (*en banc*); *United States v. Bernhardt*, 840 F.2d 1441, 1444 (9th Cir. 1988).

Plaintiffs do not object to the Magistrate Judge's recommendation to apply an abuse-of-discretion standard of review with a moderate level of scrutiny.

In their Objections, Plaintiffs reiterate the arguments in their Memorandum in Support of their Motion for Summary Judgment and their Response to Defendant's Motion for Summary Judgment as to whether Defendant abused its discretion when it (1) applied the Policy definition of "experimental/investigational" treatment to Talia Hinman's treatment, (2) denied coverage for Talia Hinman's 12-month antibiotic treatment, and (3) refused to accept the lyme-disease diagnosis by Christine Green, M.D.

This Court has carefully considered Plaintiffs' Objections and concludes they do not provide a basis to modify the Findings and Recommendation. The Court also has reviewed the pertinent portions of the record *de novo* and does not find any error in the

Magistrate Judge's Findings and Recommendation.

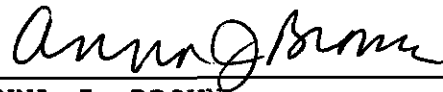
CONCLUSION

The Court **ADOPTS** Magistrate Judge Papak's Findings and Recommendation (#31) and accordingly, **DENIES** Plaintiffs' Motion for Summary Judgment (#8), and **GRANTS** Defendant's Motion for Summary Judgment (#16).

The Court directs the parties to file a stipulated form of judgment by February 19, 2010.

IT IS SO ORDERED.

DATED this 6th day of February, 2010.



ANNA J. BROWN
United States District Judge